Office of Chief Counsel Internal Revenue Service

memorandum

CC:LM:RFPH:STP:POSTF-101163-02

Ejohnson

date: FEB 2 6 2002

to: Deborah Stadsklev, Technical Coordinator; Nancy Krantz, Manager,

Case Processing Support

from: ERIC JOHNSON

Attorney

subject: 'Same Taxpayer' Treatment and Interest Accrual

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DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

The following is in response to your memorandum submitted December 19, 2001. This memorandum is revised from the memorandum previously issued dated February 11, 2002, as a result of input from Chief Counsel National Office. The revisions do not change the result stated in the memorandum of February 11, 2002, but some of the supporting language has been changed.

ISSUE

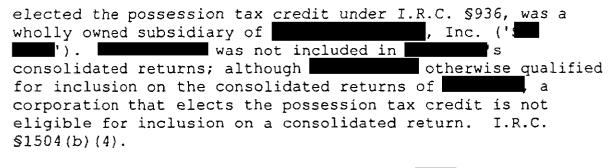
Whether two corporations filing separate returns should be treated as the same taxpayer with respect to interest accrual on underpayments and overpayments under the circumstances described.

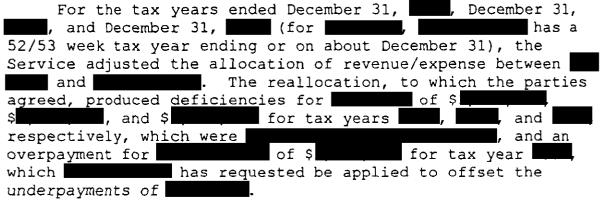
CONCLUSION

The corporations should not be treated as the same taxpayer with respect to interest accrual.

ANALYSIS

, Inc. (' '), which





Interest accrues on an underpayment from the date the underpayment arises (generally the payment due date of the underpayment tax year) until the underpayment is paid. I.R.C. \$6601(a). Interest accrues on an overpayment from the date the overpayment arises (generally the payment due date of the overpayment tax year) until the overpayment is refunded. I.R.C. \$6611(b)(2).

Under I.R.C. 6402(a) the Service 'may' credit an overpayment against an outstanding underpayment "on the part of the person who made the overpayment". (The Service is not required to make such a credit. Northern States Power Co. v. United States, 73 F.3d 764 (8th Cir. 1996), cert. denied, 519 U.S. 862 (1996).) Where the Service makes such a credit, the overpayment credit is applied retroactively as of the date the overpayment and underpayment periods first 'overlap', i.e. the later of the payment due date for the underpayment tax year or the payment due date for the overpayment tax year. No interest accrues for the taxpayer on the overpayment or against the taxpayer on the underpayment during the period, and to the extent, of the overlap. I.R.C. §§6601(f), 6611(b)(1).

Under I.R.C. §6621(d), enacted in _____, a net interest rate of zero applies for any period of overlapping

underpayment and overpayment amounts with respect to "the same taxpayer".

The Service if requested also may credit the overpayment of one taxpayer to the underpayment of another taxpayer. In such circumstances, the overpayment credit is applied to the underpayment only as of the date the Service makes the credit transfer. There is thus no netting of interest for the period the underpayment and overpayment overlap. The underpayment of the one taxpayer and overpayment of the other taxpayer accrue interest separately to the point when the Service administratively transfers the credit. Rev.Proc. 65-20, 1965-2 C.B. 1003.

and argue that they should be
treated as the same taxpayer for purposes of I.R.C. §§6402(a)
and 6621(d). The argument is essentially 1) that the
underpayments of and the overpayment of
are transactionally related and 2) that and and
are related taxpayers and otherwise qualify for filing a
consolidated return except that they are prevented by I.R.C.
\$1504(b)(4).

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and	662	1(d)	ur	der	thes	e cir	cums	tance	s.		а	ind 💮	
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Please contact the undersigned at (651) 290-3473 ext. 245 with any questions.

Reid M. Huey Associate Area Counsel (Large and Mid-Size Business)

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